

April 5, 2002

Colonel Brian E. Osterndorf  
District Engineer  
United States Army Corps of Engineers  
696 Virginia Road  
Concord, Massachusetts 01742-2751

RE: Cape Wind Project Draft Environmental Impact Statement Scoping Comments

Dear Colonel Osterndorf:

EPA New England appreciates the opportunity to comment on the scope of analysis for the preparation of a Draft Environmental Impact Statement (DEIS) for the Cape Wind Associates, LLC (Cape Wind) proposal to construct a wind-powered electrical generation facility (wind farm) in Nantucket Sound off the coast of Cape Cod, Martha's Vineyard and Nantucket. Based on the applicant's information, we understand that the project will feature 170 wind turbines spread across 28 square miles of Nantucket Sound that would produce up to 420 megawatts of energy. The 426 foot tall turbines would produce energy that would be transmitted via submarine cables to an electrical service platform where it would be converted and transferred to Cape Cod via two 115KV submarine cables. While preparing these comments, EPA has reviewed applicant-generated information contained in its application to the Corps of Engineers (Corps) for Section 10 authorization and recent comments offered by a number of state and federal agencies, as well as the public. This letter sets forth our specific concerns about the scope of analysis for the DEIS.

EPA commends the Corps for deciding early on that an EIS should be prepared pursuant to the National Environmental Policy Act (NEPA) to support decision-making regarding the Cape Wind proposal to construct a wind farm in Nantucket Sound. That decision paves the way for a comprehensive analysis of this challenging and precedent-setting project. In addition, EPA fully supports the efforts of the Corps and the Massachusetts Executive Office of Environmental Affairs to integrate their respective reviews within a combined DEIS/DEIR under NEPA and Massachusetts Environmental Policy Act (MEPA). This joint review should improve the public review process and streamline the environmental review for the project.

The Corps-sponsored scoping sessions were well attended and featured a valuable transfer of questions, concerns and suggestions about both the project and the types of information that should be included in the DEIS/DEIR. Discussion at each meeting demonstrated significant public interest in a comprehensive evaluation. Continued interagency coordination across federal, state and local jurisdictions will be critical for ensuring that the DEIS/DEIR adequately informs the various regulatory reviews that will follow.

As you know, the generation of electricity from fossil fuels is the single largest industrial source of air pollution in New England. Because of these fossil-fuel power plant emissions, New England continues to experience too many days of unhealthy air and too much degradation of the

environment, including acidification of lakes and streams, mercury deposition, visibility impairment, greenhouse gas emissions, and excessive nitrogen loading to our ecosystems. In addition, apart from air emissions, fossil fuel burning power plants can cause environmental harm from their withdrawal of cooling water from, and their discharge of heated water to, the region's waterways. There are also many adverse environmental impacts associated with the extraction, refining and transportation of fossil fuels to be used in the New England market. Consequently, EPA New England strongly supports an increase in the amount of electricity generated in the region from renewable resources such as wind power. However, no shift to renewable energy, either through the development of this or any other project, can be made without a complete understanding of the environmental impacts and tradeoffs associated with each alternative.

EPA looks forward to coordinating with the Corps and other local, state and federal interests as work is done to determine the appropriate scope of analysis for the project and as specific investigations are developed to gauge the level of impact associated with each alternative under consideration. Off-shore wind farm operations, such as the one proposed by Cape Wind, raise a number of public policy concerns and environmental questions that must be carefully addressed. These issues are summarized below.

### **Determination of the Range of Alternatives**

The Council on Environmental Quality's (CEQ's) regulations implementing NEPA at 40 CFR Part 1502.14 explain that a reasonable range of alternatives should be presented and compared in the DEIS to allow for a "clear basis for choice among options by the decision maker and the public." Moreover, CEQ's "Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations" explain that "Section 1502.14 requires the DEIS to examine all reasonable alternatives to the proposal. In determining the scope of alternatives to be considered, the emphasis is on what is 'reasonable' rather than on whether the proponent or applicant likes or is itself capable of carrying out a particular alternative. Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant."

Framing an appropriate purpose and need statement is a key element in the development of a range of alternatives for analysis, as the alternatives flow directly from it. The proponent's application states that the project's purpose is "to generate up to 420 MW of clean, renewable wind-generated energy that will be transmitted and distributed to the New England regional power grid, including Cape Cod and the Islands...." While we think the applicant's proposed purpose statement is a good starting point, we recommend it be modified to make it less constraining for the purposes of the NEPA analysis and determining the range of alternatives to be investigated in the DEIS/DEIR. As a starting point, we suggest that the purpose statement be modified by striking the words "clean" (as it is somewhat vague and open to interpretation) and "wind-generated" (too limiting) and the phrase "including Cape Cod and the Islands..." (as a geographic aspect is implied in the New England Power Grid component of the statement).

Finally, we suggest that specific reference to a particular size for the project be dropped from the purpose statement and that it be replaced with language descriptive of a commercially viable renewable energy facility. With these changes, the basic project purpose statement would read, “The project’s purpose is to develop a commercially viable renewable energy facility that will generate electricity distributed to the New England regional power grid.”

EPA looks forward to working with the Corps and other federal agencies in a cooperative fashion to establish an appropriate basic project purpose through the Highway Methodology Process. The characterization of need provided by the applicant should be fully supported by the analysis provided in the DEIS/DEIR. Following that step, the agencies should work closely to agree on an acceptable range of alternatives to be considered in the DEIS/DEIR. At this point the range of alternatives could include renewable energy generation from a number of sources of different sizes/generation capacities, both on and offshore, or combinations of sources/types of facilities, that would supply power to the New England power grid. The analysis should fully analyze the rate of development of new wind technology and the likelihood that currently infeasible alternatives may become feasible in the near future (e.g., placement of turbines in deeper waters). The alternatives list would also, of course, include the applicant’s proposal as well as the No-Build scenario.

### **Analysis of Alternatives**

Once a complete list of alternatives is identified, the Corps should consider developing an interagency work group (including federal and state participation) to develop screening criteria, tailored to this case and linked directly to the statement of purpose and need, that will support decisions to eliminate or retain alternatives for additional analysis in the DEIS/DEIR. As alternatives advance through the screening process we expect that increasing levels of information and analysis will be necessary to evaluate tradeoffs and to support decision-making.

The Corps’ analysis of alternatives will require a thorough and independent examination of the applicant’s claims regarding a number of factors including:

- project size and proposed site;
- project need;
- potential benefits;
- potential costs/impacts; and,
- renewable energy technology.

At this point, the economics of the project are poorly understood and a greater level of information will be necessary to evaluate the proposed alternative as well as other alternatives that could achieve the project purpose. The discussion of alternatives should include the impact on electricity rates in New England and a discussion of fuel diversity, and the potential for future supply constraints, reliability problems, and price increases associated with over-reliance on a particular fuel source.

A thorough assessment of the relative environmental tradeoffs of each alternative should be provided in the DEIS/DEIR. As you know, the record is brimming with a wide range of important and thoughtful comments offered by our federal and state colleagues as well as by industry groups and the public. Each of these comments must be carefully considered during the development of the scope for the DEIS/DEIR. At this point in the scoping process the list of potential impacts that should be addressed is lengthy. While we recognize that the consideration of impacts must be tailored for each alternative under consideration, it currently appears that the list of issues to be explored includes: avian impacts, marine impacts (to recreational and commercial fisheries, marine mammals, benthic habitat, circulation, physical conditions, and overall ecology), visual impacts, noise and vibration impacts, aviation impacts, impacts to communication/transmission networks, commercial and recreational navigation/use, and direct and secondary impacts to the local/regional economy (recreation, tourism, fishing, coastal property values, etc.).

The analysis should discuss the environmental benefits/avoided impacts of alternatives under consideration when compared to each other and to other forms of non-renewable energy production. For example, the discussion should include avoided upstream environmental impacts associated with the mining of coal, the drilling for oil and natural gas, the refining of petroleum, and the transportation of these materials to New England. Other issues that should be part of the comparison include hazardous material usage and storage, thermal loads associated with fossil fuel fired plants, and the potential for impacts such as impingement and entrainment of fish and larvae in cooling water intakes at fossil fuel-fired plants. In addition, the analysis should describe the situations where an alternative might displace other forms of energy generation and the relative impacts/benefits of such a shift in energy production.

The DEIS/DEIR should establish a baseline from which impacts of the project alternatives can be discerned and evaluated. The same baseline information should then also be used going forward to evaluate the impacts of any project that may be constructed. The tradeoff analysis should also consider emissions offsets from criteria pollutants and CO<sub>2</sub> and the relative environmental costs incurred and avoided from the development of various forms of renewable energy. The tradeoff analysis should also address the environmental and societal impacts of climate change on the ecosystems being studied in the course of developing the EIS, and the incremental role that each renewable carbon-neutral energy generation project can play in mitigating those impacts. During the course of a recent interagency discussion, the Corps suggested that “topic specific” working groups would help focus the discussion on particular issues as the DEIS/DEIR is developed. We think this idea has merit and should be pursued.

## **Public Trust Issues**

The DEIS/DEIR must fully consider the public trust implications of siting a facility in federal waters. The proposed wind farm would spread across 28 square miles of Nantucket Sound. With the exception of two transmission cables and a portion of a proposed “wind wake buffer zone,” the project will be located beyond the three mile limit of state waters in federal waters on the outer continental shelf (OCS). Increasing public concern has focused on the lack of an established process (exclusive of the Corps Rivers and Harbors Act Section 10 authority) through which the federal government can effectively deal with a number of precedent setting issues associated with the proposed project. These include but are not limited to: the lack of existing policy and regulation dictating which agency has authority over siting issues, whether competition should exist for development sites, how/whether easements/leases/fees should be required for the use of public property and its resources by a private corporation, and what sort of requirements should be imposed to ensure proper site restoration and management after the useful life of the project ends. These issues grow in importance as we learn about other proposals for offshore energy projects in New England and other coastal areas of the United States.

EPA, NOAA, and the Corps, among others, are participants in a Department of Interior working group focused on possible modifications to the Outer Continental Shelf Lands Act (OCSLA) that would address transmission of energy projects and renewable energy development on the OCS. To date, draft language for possible legislation focuses on the granting of easements/rights-of-way and the establishment of “fees to assure [that the public receives] fair market value for rights conveyed.” The preliminary considerations also contemplate competitive or non-competitive granting of easements/rights-of-way. The DOI efforts are timely and each of these issues remains ripe for analysis in the DEIS/DEIR. Moreover, heightened public interest in the project warrants the establishment of clear public policy to fill the “gap in the process” in advance of decision-making that will follow the NEPA process. If this does not occur in a timely fashion outside the NEPA process, the Corps will need to thoroughly explore these public policy issues in the DEIS/DEIR.

The Cape Wind project is the first of what appears likely to be a number of proposals to develop renewable energy facilities off the coast of New England. We believe these projects, if properly sited to avoid impacts, may offer a tremendous opportunity to New England in moving toward a more sustainable and more diverse energy future. Given these implications, it is all the more imperative that the public trust issues raised by such projects be resolved thoughtfully and quickly. It is our belief that the project should not proceed through the permit process absent

serious analysis of this private use of public trust resources for renewable energy development on the OCS. Several strategies to deal with the existing policy void are apparent:

- The Corps could proceed with the current DEIS/DEIR analysis in a manner that fully incorporates the results of ongoing decision-making of the interagency work group and/or subsequent legislative action;
- In recognition of the pressing need for clear public policy on this issue, and in view of the fact that multiple wind power proposals are under consideration for New England offshore waters, the Corps or another appropriate agency (e.g. the Department of the Interior) could develop a programmatic EIS that takes a comprehensive look at potential sites for offshore renewable energy development and provides information that can then be used for site specific applications for individual projects;
- The Corps could proceed with the DEIS for this project absent an external process to deal with the lack of clear policy—in this instance the Corps would conduct its own comprehensive investigation of public trust issues associated with the project and its alternatives.

We believe that an analysis with no consideration of public trust issues and absent any national policy/regulation that governs the use of OCS lands for renewable energy generation is not an appropriate option. EPA is concerned with the lack of policy/regulation and recommends that the agencies meet to discuss the various options to develop an appropriate strategy. We also recommend that the Corps consider coordinating with the Council on Environmental Quality on this challenging issue. EPA looks forward to reviewing the Corps' draft scope of work for the DEIS with particular attention to this fundamental issue and to future discussions about the merits of various approaches.

### **Coordination/Communication**

Close interagency coordination throughout the preparation of the DEIS/DEIR is critical. To that end, EPA intends to work as a cooperating agency to help define the scope of analysis and to offer input on how specific issues should be addressed in the DEIS. We encourage the Corps to keep an open dialogue with local, state and federal agency representatives throughout the process, with particular attention to agencies such as the Cape Cod Commission that have a long history representing the interests of the resident population that feels it would be most impacted by the applicant's proposed project. The communication strategy should include updates on the DEIS at important milestones, as public policy around the use of the OCS evolves, and should consider the release of relevant study findings as they become available. The work by the Corps so far during the scoping process bodes well for an open public process.

Finally, we suggest that the Corps distribute a draft of the final scope for the DEIS to the interagency group to make sure that there is general consensus on the scope of alternatives and the impact analysis. We are willing to work with Corps staff to help facilitate this effort if necessary and we look forward to participating in upcoming interagency coordination meetings and reviewing draft documents as appropriate and as our resources allow. We hope that the

Corps will allocate sufficient resources to support a comprehensive analysis and independent review of applicant generated information/analysis that will be incorporated into the DEIS. Should you have any questions or wish to discuss our concerns, please contact me or Timothy Timmermann of EPA New England's Office of Environmental Review at 617/918-1025. Thank you for the opportunity to provide scoping comments.

Sincerely,

Robert W. Varney  
Regional Administrator

cc:

The Honorable Edward M. Kennedy, U.S. Senate  
The Honorable John F. Kerry, U.S. Senate  
Representative William Delahunt  
Secretary Robert Durand, Executive Office of Environmental Affairs  
Margo Fenn, Cape Cod Commission  
Michael J. Bartlett, United States Fish and Wildlife Service  
Peter D. Colosi, National Marine Fisheries Service  
Barry Drucker, United States Department of Interior  
Albert Benson, United States Department of Energy  
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Thomas W. Skinner, Massachusetts Office of Coastal Zone Management  
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